

## CHAPTER 36 - WORKER'S COMPENSATION

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## **CHAPTER 36 -- WORKER'S COMPENSATION**

### **36.1      SECTION 1:    PURPOSE.**

The Red Cliff Band of Lake Superior Chippewa Indians, exercising its sovereign regulatory powers, declares that all work-related injuries and deaths sustained by its employees are withdrawn from private controversy. The Red Cliff Band of Lake Superior Chippewa Indians Self-Insurance Plan shall serve as the exclusive remedy for the injured employee.

### **36.2      SECTION 2:    APPLICABILITY.**

This chapter shall apply to all employees of the Red Cliff Band of Lake Superior Chippewa Indians.

### **36.3      SECTION 3:    DEFINITIONS.**

For purposes of this chapter:

**36.3.1**      "Disability" means total incapacity to earn wages because of injury in the same or any other employment.

**36.3.2**      "Employee" means employees of the Red Cliff Band of Lake Superior Chippewa paid under Federal Identification Number 39-1178866, except that the term employee shall not include independent contractors.

**36.3.3**      "Injuries" shall mean the physical conditions resulting from a sudden and tangible happening, of a traumatic nature, producing an immediate result. Injuries shall include the accidental contraction of an occupational disease, or recurrence of such occupational disease, damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired; except that eyeglasses and hearing aids would not be replaced, repaired, or otherwise compensated for, unless the damages or destruction is incident to a personal injury requiring medical services. A resulting mental, emotional, nervous, or stress-related condition due to fright, excitement or stress as well as disability or death due to the creation, acceleration or aggravation of alcoholism or drug abuse are not covered by the Chapter.

- 36.3.4 "Physician" means the Red Cliff Tribal physician or another physician employed by the Red Cliff Tribe to perform duties contemplated by this chapter.
- 36.3.5 "Monthly Pay" means the monthly pay at the time of injury, or the monthly pay at the time disability occurs.
- 36.3.6 "Program Administrator" means the person designated by the Red Cliff Tribal Council to carry out the program administrator's duties under this chapter.
- 36.3.7 "Student" means an individual under 23 years of age who has not completed 4 years of education beyond high school level and who is regularly pursuing a full-time course of study or training at a college approved by the program administrator.

36.4 **SECTION 4: MEDICAL SERVICES AND INITIAL MEDICAL AND OTHER BENEFITS.**

The Program Administrator shall furnish to an employee who is injured (as that term is defined in sec. 36.3.3) as a result of a work related activity medical benefits which include all medically related activities that are either billed by the Reservation physicians, referred by the Reservation physicians or approved by the Reservation physicians or program administrator. These are to include but are not necessarily limited to such things as doctor visits, hospital bills, ambulance bills, pharmaceutical bills, etc. It can also include knee braces, special orthopedic devices, etc. These are not to include any payment to chiropractors other than payments for the manual manipulation of the spine to correct a subluxation as demonstrated by x-ray.

36.5 **SECTION 5: COMPENSATION FOR DISABILITY OR DEATH OF AN EMPLOYEE.**

The Program Administrator shall pay compensation where the disability or death of an employee occurred as a result of a work related activity unless the injury or death is:

- (1) Caused by willful misconduct of the employee;
- (2) Caused by the employee's intention to bring about the injury or death of himself or of another;

- (3) Proximately caused by the intoxication of the injured employee.

**36.5.1** Limitations on Weekly Benefit Rates

The weekly benefit rate for employees shall be no less than \$30.00 and no more than \$152.00 for those employees with permanent partial disabilities, (see Table A). The weekly benefit rate for employees with temporary disability, permanent total disability, or death benefits shall be no less than \$30.00 and no more than \$450.00 (see Table B for temporary or permanent total disability). These limitations do not apply to benefits to employee is entitled to continuation of pay under section 36.5.2.

**36.5.2** In the case of an injury to an employee (as defined in 36.3.3) and upon the filing of a claim for Continuation of Pay (Form CA-1 used by the U.S. Department of Labor) within 30 days of the injury by the employee to his or her supervisor, the employee is entitled to continue their regular wages for the period in which the employee is incapacitated, this action may be taken by someone acting on his/her behalf including a family member, union official, representative, or agency official. The form must contain the original signature of the person giving notice. If disability exceeds 45 calendar days, the employee is entitled to file for compensation for wages lost in accordance with section 36.5 through 36.10. The time the employee seeks medical attention for an injury will be charged to administrative leave and be paid at regular wages. Continuation of pay starts the first day after the injury.

**36.6** **SECTION 6: TOTAL DISABILITY.**

If the disability is total, the Program Administrator shall pay the employee during the disability a monthly payment equal to 60 percent of his/her monthly pay for up to six months. Extensions of benefits beyond six months may only be granted if all self-insurance program trustees and the Tribal Council so authorize on a case-by-case basis, subject to limitations of 36.5.1.

**36.7            SECTION 7:    PARTIAL DISABILITY.**

If the disability is partial, the Program Administrator shall pay the employee during the disability a monthly payment equal to 60 percent of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of the partial disability, subject to limitations of 36.5.1

**36.8            SECTION 8:    PERMANENT DISABILITY.**

If there is a permanent disability the employee is entitled to basic compensation for the disability as provided by the schedule in subsection (c) of this section, at the rate of 60 percent of his monthly pay. The basic compensation is in addition to compensation for temporary total or temporary partial disability, subject to limitations of 36.5.1.

**36.9            SECTION 9:    NOTICE OF INJURY AND CLAIM.**

The injured employee must report an injury to his or her immediate supervisor within 30 days of when the injured occurred in order to be entitled to payments under this chapter. If the employee is incapacitated, this action may be taken by someone acting in his/her behalf, including a family member, union official, representative, or original signature of the person giving notice. The supervisor shall then file a claim with the program administrator within twenty four (24) hours of being informed of the injury. An original claim for disability or death must be filed within three years after the injury or death-giving rise to a claim for benefits under this chapter. Claims for medical or surgical treatment shall be in excess of all other coverage afforded by Indian Health Service (IHS) or other insurance in order to be covered by this chapter.

**36.10          SECTION 10:    TIME OF ACCRUAL OF RIGHT.**

An employee is not entitled to compensation for the first 3 days of temporary disability, except-

- (1) When the disability exceeds 14 days
- (2) When the disability is followed by permanent disability; or

(3) As provided by sec. 36.3.

(4) As provided by sec. 36.5.2.

**36.11      SECTION 11: PHYSICAL EXAMINATION.**

An employee shall submit to examination by the Reservation physician or by a physician designated or approved by the Program Administrator, after the injury and as frequently and at times and places as may be reasonably required. Failure to submit to such physical examinations will disqualify the employee from any further benefits under this chapter.

**36.12      SECTION 12: FINDINGS AND AWARD.**

The Red Cliff Band of Lake Superior Chippewa Indians shall establish and empower a Program Administrator and trustees of the self-insurance plan consisting of the Tribal Programs Administrator, Finance Officer, and Personnel Officer, to review and resolve any and all worker's compensation disputes, and to make findings of fact and awards for or against payment of compensation. The Program Administrator shall supervise medical, surgical and hospital treatment for injured employees to ensure it meets the required standards of modern medicine at the lowest possible cost. Statistics and pertinent data shall be maintained upon which to base operation of all plan functions and to support the effectiveness and timeliness of the Program Administrator's decision.

**36.13      SECTION 13: DETERMINATION OF WAGE-EARNING CAPACITY.**

In determining compensation of partial disability, except permanent partial disability, the wage-earning capacity of an employee is determined by his actual earnings if his actual earnings fairly and reasonably represent his wage-earning capacity. If the actual earnings of the employee do not fairly and reasonably represent his wage-earning capacity or if the employee has no actual earnings, his wage-earning capacity as appears reasonable under the circumstances is determined with due regard to-

- (a) The nature of his injury;
- (b) The degree of physical impairment;
- (c) His usual employment;

- (d) His age;
- (e) His qualifications for other employment;
- (f) The availability of suitable employment; and
- (g) Other factors or circumstances, which may affect his wage-earning capacity in his disabled condition.

36.14

**SECTION 14: COMPENSATION IN CASE OF DEATH.**

- (a) If death results from an injury occurring on the job as a result of a work related activity, the Program Administrator shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased in accordance with the following schedule:
  - (1) To the widow or widower, if there is no child, 50 percent.
  - (2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.
  - (3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.
  - (4) To the parents, if there is no widow or widower, or child, as follows:
    - (A) 25 percent if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;
    - (B) 20 percent to each if both were wholly dependent; or
    - (C) A proportionate amount in the discretion of the program administrator if one or both were partly dependent.

If there is a widow, widower, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of 75 percent.

- (5) To the brothers, sisters, grandparents, and grandchildren, if there is no widow, widower, child, or dependent parent, as follows-
  - (A) 20 percent if one was wholly dependent on the employee at the time of death;
  - (B) 30 percent if more than one was wholly dependent, divided among the dependents share and share alike; or
  - (C) 10 percent if no one is wholly dependent but one or more is partly dependent, divided among the dependent share and share alike

If there is a widow, widower, or child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of 75 percent.

- (b) The compensation payable under subsection (a) of this section is paid from the time of death until:
  - (1) A widow, or widower dies or remarries before reaching age 60;
  - (2) A child, a brother, a sister, or a grandchild dies, marries, or becomes 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support; or
  - (3) A parent or grandparent dies, marries, or ceases to be dependent.



Notwithstanding paragraph (2) of this subsection, compensation payable to or for a child, a brother or sister, or grandchild that would otherwise end because the child, brother or sister, or grandchild has reached 18 years of age shall continue if he/she is a student as defined by section 36.2.6 at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries. A widow or widower who has entitlement to benefits under this chapter derived from more than one husband or wife shall elect one entitlement to be utilized.

- (c) When there are two or more classes of individuals entitled to compensation under this chapter and the apportionment of compensation under this section would result in injustice, the program administrator may modify the apportionment to meet the requirements of the case.

**36.15      SECTION 15: FUNERAL EXPENSES.**

If death results from an injury sustained in the performance of duty, the Tribe shall pay, to the personal representative of the deceased or otherwise, funeral and burial expenses not to exceed \$3,500, in the discretion of the Program Administrator.

**36.16      SECTION 16: LUMP SUM PAYMENT.**

The liability for compensation in the case of death or permanent disability may be discharged by a lump sum payment equal the present value of future payments of compensation computed at 4 percent true discount compounded annually.

**36.17      SECTION 17: COMPENSATION FUND.**

There is in the Tribal Treasury an Employee's Compensation Fund which consists of sums that the Tribe, from time to time, may transfer to it to pay compensation as authorized by this chapter. The Program Administrator and/or Tribal Treasurer shall provide to the Tribal Council annually (a) a statement showing the total cost

of benefits and other payments made from the fund during the preceding year, (b) a statement showing monies available in the fund for payment of claims and (c) estimates for costs of operation and maintenance of the fund in the coming year.

**36.18      SECTION 18:    REDUCTION OF COMPENSATION FOR SUBSEQUENT INJURY TO SAME MEMBER.**

The period of compensation payable under the schedule in sec. 36.7(c) of this chapter is reduced by the period of compensation paid or payable under the schedule for an earlier injury if:

- (a) Compensation in both cases is for disability of the same member or function or different parts of the same member or function or for disfigurement; and
- (b) The program administrator finds that compensation payable for the later disability in whole or in part would duplicate the compensation payable for the preexisting disability.

In such a case, compensation for disability continuing after the scheduled period starts on expiration of that period as reduced under this section.

**36.19      SECTION 19:    BENEFICIARIES OF AWARDS UNPAID AT DEATH.**

- (a) If an individual:
  - (1) Has sustained disability compensable under sec. 36.7(c);
  - (2) Has filed a valid claim in his lifetime; and
  - (3) Dies from a cause other than the injury before the end of the period specified by the schedule; the compensation specified by the schedule that is unpaid at his death, whether or not accrued or due at his death, shall be paid:
    - (A) Under an award made before or after the death;
    - (B) For the period specified by the schedule;

- (C) To and for the benefit of the persons then in being within the classes and proportions and on the conditions specified by this section; and
- (D) In the following order of precedence:
  - (i) If there is no child, to the widow or widower.
  - (ii) If there are both a widow or widower and a child or children, one-half to the widow or widower and one-half to the child or children.
  - (iii) If there is no widow or widower, to the child or children.
  - (iv) If there is no survivor in the above classes, to the parent or parents wholly or partly dependent for support on the descendant, or to other wholly dependant relatives, or both in proportions provided by regulation.
  - (v) If burial expenses remain unpaid and are not covered by any existing insurance policy, then such burial expenses actually incurred shall be paid to either the person or entity performing said services, or to that person who actually paid for such burial services, whichever is applicable.
- (b) Payments under subsection (a) of this section, except for an amount payable for a period preceding the death of the individual, are at the basic rate of compensation for permanent disability specified by section 36.7(c) of this chapter.
- (c) A surviving beneficiary under subsection (a) of this section, except one under subsection (a) (D) (v), does not have a vested right to payment and must be alive to receive payment.
- (d) A beneficiary under subsection (a) of this section, except one under subsection (a) (D) (v), ceases to be entitled to payment on the happening of an event which would terminate his right to compensation for death under sec. 36.14 of this chapter. When that

entitlement ceases, compensation remaining unpaid under subsection (a) of this section is payable to the surviving beneficiary in accordance with subsection (a) of this section.

**36.20      SECTION 20: ACTION AGAINST THIRD PARTIES.**

An employee who filed against the Workers Compensation Fund will have to sign over to the Tribe his/her action against the responsible third party. The injured employee shall continue to cooperate with the Tribe in all actions. Under no circumstances can the injured employee recover against more than one entity.

**36.21      SECTION 21: APPEAL.**

**36.21.1    Program Administrator/Trustees**

(a) All the decisions of the Program Administrator or the Board of Trustees regarding eligibility, determinations of disability, benefits APPEAL, and ability to return to full or part-time work are appeal able to the Administrator by the worker or employer provided that such appeal is in writing and made 15 days after the receipt by the worker or employer of the Administrator's determination.

(b) The Administrator shall have 30 days from the receipt of the worker's or employer's written appeal for reconsideration.

**36.21.2    Appeal to Tribal Court.** In the event the worker or employer is not satisfied with a final determination, said final determination may be appealed by filing a written complaint with the Red Cliff Tribal Court, whose decision shall be final.